

REMARKS

This Amendment is submitted in response to the Final Office Action mailed on February 5, 2009. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112857-463 on the account statement.

In the Office Action, the claims were rejected for alleged obviousness reasons in view of Japanese Patent Document No. 07-249419 ("Goto") and U.S. Patent No. 5,258,239 ("Kobayashi") and some of the claims were rejected in view of additionally cited references including U.S. Patent No. 6,500,575 ("Shiue").

In response, Applicant has amended the independent claims to further recite wherein the generate element is a MEA adapted to receive hydrogen gas or methanol as fuel. Support for this amendment can be found in Applicant's published application, for example, in paragraph 36.

As previously provided, the Patent Office has relied on the Kobayashi reference and further in combination with Shiue in support of the obviousness rejections. However, Kobayashi and Shiue are directed to a metal-air battery as Applicant indicated in its previously-submitted response. Clearly, the subject matter of Kobayashi and Shiue is not relevant to the field of fuel cells, let alone the claimed invention that include, in part, a generating element that is a MEA adapted to receive hydrogen gas or methanol as fuel as previously discussed. Therefore, Applicant does not believe that the Kobayashi and Shiue references can be relied on to remedy the deficiencies of the other cited art, particularly the primary Goto reference. Therefore, Applicant believes that the Patent Office has failed to establish a *prima facie* case of obviousness, and thus the obviousness rejections should be withdrawn at least in view of same.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

K&L GATES LLP

BY

Thomas C. Basso (46,541)
Customer No. 29175

Date: April 23, 2009